

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DENNIS CLARK,

Plaintiff,

- against -

LIFTABLE MEDIA, INC.

Defendant.

Docket No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Dennis Clark (“Clark” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Liftable Media, Inc. (“Liftable” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Robert Schiavelli, owned and registered by Clark, a professional photographer. Accordingly, Clark seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Arizona.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Clark is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 1993 Beech Street, Wantagh, New York 11793.

6. Upon information and belief, Lifiable is a foreign business corporation duly organized and existing under the laws of the State of Arizona, with a place of business 41810 N Venture Drive, Building F, Anthem, AZ 85085. Upon information and belief Lifiable is registered with the Arizona Department of State Division of Corporations to do business in the State of Arizona. At all times material, hereto, Lifiable has owned and operated a website at the URL: www.Lifiable.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Clark photographed Robert Schiavelli (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Clark is the author of the Photograph and has at all time been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-103-136

B. Defendant’s Infringing Activities

10. Lifiable ran an article on the Website titled *Laughing too Loudly Lands One Man Fines, Possible Jail Time*. See URL: <http://www.lifiable.com/catherine-jimenez/laughing-too-loudly-lands-one-man-fines-possible-jail-time/>. The article featured the Photograph. A screenshot of the Photograph on the article is attached hereto as Exhibit B.

11. Lifiable did not license the Photograph from Plaintiff for its article, nor did Lifiable have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Lifiable infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Lifiable is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Lifiable be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;

2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringement;
5. That Plaintiff be awarded attorney's fees and costs;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
July 31, 2019

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz, Esq.
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Dennis Clark